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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of CHRISTOPHER and
VALERIE BOULTER.

CHRISTOPHER LLOYD BOULTER,

Respondent,

v.

VALERIE JUNE BOULTER,

Appellant.

VALERIE J. BOULTER,

Plaintiff,

v.

CHRISTOPHER L. BOULTER,

Defendant.

G055565

(Super. Ct. No. 09D008911)

O P I N I O N

(Super. Ct. No. 30-2013-00630918)

Appeal from a judgment of the Superior Court of Orange County, Sheila
Prell Sonenshine, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Menke & Menke, Dennis V. Menke and James D. Menke for Plaintiff and Appellant.

Schiffer & Buus, Eric M. Schiffer and William L. Buus for Defendant and Respondent.

* * *

Appellant Valerie June Boulter and respondent Christopher Lloyd Boulter stipulated to the terms of a judgment dissolving their marriage.¹ Pursuant to the terms of the judgment, the parties each received a 50 percent interest in a company called Val-Chris Investments, Inc. (Val-Chris), owned by them during the marriage as community property. Beginning some 15 months after entry of the dissolution judgment, Valerie began alleging that Christopher was diverting funds from Val-Chris to entities he owned as a sole owner. Valerie first sought to litigate these claims in the family law court. After a transfer to the civil division of the superior court, Valerie amended her claims, and demanded a voluntary dissolution of Cal-Chris. Christopher elected to purchase Valerie's shares to avoid the corporate dissolution. Valerie's remaining claims were returned to the family law court. There, Valerie sought to recover money she claimed was due her under the marital dissolution judgment. After a bench trial, the court found in favor of Christopher. We affirm the judgment.

FACTS

Christopher and Valerie were married in 1984 and separated on July 12, 2009. A stipulated judgment of dissolution was entered in May 2010.

¹ To avoid confusion, we refer to the parties by their first names. We intend no disrespect.

During their marriage, the parties owned Val-Chris as community property. Val-Chris was in the business of loaning money secured by first, second, and third trust deeds. It specialized in both residential and commercial loans, as well as trust deed purchases. During the marriage, Christopher worked as the president of the company. Valerie was not involved in Val-Chris's business at all. Pursuant to the stipulated judgment, each party received a 50 percent interest in the company.

At the time of the stipulated judgment, Val-Chris was paying Christopher \$30,000 per month in salary and approximately \$4,000 per month in dividends. The judgment provides, "Following the entry of this judgment, [Christopher's] income from all sources shall average of [*sic*] \$34,000 per month." The judgment further provides that Christopher may receive a 3 percent raise per year, plus a bonus of 20 percent of all net profits exceeding \$50,000. Additionally, "[a]ny time that [Christopher] receives payment of any dividend, profit, or any other disbursement from the Company (other than reasonable reimbursement of expenses related to the Company, [Christopher's] compensation or [Christopher's] bonus), [Valerie] shall receive a payment equal to any such disbursement that is paid to [Christopher] by the Company."²

In August 2011, Valerie filed a request for order in the family law court, alleging that Christopher was diverting funds from Val-Chris to various entities of which he was the sole owner. The family law court found "as a matter of administrative jurisdiction that this matter should be heard in civil court." Accordingly, it transferred the case to the civil division of the superior court.

Rather than proceed in the civil division on the existing case, however, Valerie filed a new complaint, alleging causes of action for breach of fiduciary duty and declaratory relief, and seeking various remedies such as damages, injunctive relief, and

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One of the running issues in this appeal is the characterization of payments from Val-Chris to Christopher as either compensation, in which case Valerie is not entitled to a like-kind payment under this section, or a disbursement, in which case she is.

the appointment of a provisional director. Both Christopher and Val-Chris were named as defendants. A few weeks after filing her complaint, on February 28, 2013, she served a demand to dissolve Val-Chris pursuant to Corporations Code section 1900, subdivision (a).

In April 2013, in response to Christopher's election to purchase Valerie's shares pursuant to Corporations Code section 2000, the court stayed the dissolution of Val-Chris pending an appraisal of Valerie's interest in Val-Chris. The court ordered that each party appoint one appraiser, and the two appraisers were to select a third. The valuation date was set as February 28, 2013, the day Valerie served the notice of election to dissolve the company.

After a hearing, the court rejected two of the appraisals and ultimately adopted the remaining appraisal without any adjustments. It concluded that the fair value of Val-Chris as of February 28, 2013, was \$3,653,000. The court ordered Christopher to pay half that amount to Valerie to purchase her 50 percent share in lieu of dissolving the company. However, the court permitted Christopher to reduce the amount he paid Valerie by \$40,000 "by reason of her already having received that sum from Val-Chris since February 28, 2013." Christopher ultimately paid Valerie the amount required by the judgment to obtain her interest in Val-Chris.

After the valuation proceeding, Christopher filed a motion for summary adjudication as to some of Valerie's remaining civil claims. The court granted that motion in part, adjudicating the causes of action that required Valerie to be a shareholder. Valerie then dismissed Val-Chris from the action and amended her complaint.

The amended complaint focused on Christopher's alleged failure to comply with the marital dissolution judgment, and his alleged misuse of community property. In particular, and as relevant to this appeal, Valerie alleged that Christopher paid himself pension contributions that should have triggered a like-kind payment to Valerie under the marital dissolution judgment. She further alleged that she was entitled to profit

distributions from the period *after* the valuation date, but before she was bought out of Val-Chris. And she alleged that Christopher had concealed assets from her at the time the marital dissolution judgment was entered. Because these causes of action all stemmed from either the family law judgment or general family law principles, the court consolidated the civil case with the family law case and ordered the matter transferred back to the family law division. Once there, the parties stipulated to the appointment of retired Justice Sheila Prell Sonenshine as a temporary judge to preside over the remaining claims.

The family law court held a bench trial on all remaining claims. With one exception not relevant to this appeal, the court found in favor of Christopher on all of Valerie's claims.

First, the court held that contributions by Val-Chris to Christopher's pension were not "disbursements" under the family law judgment such that Valerie would be entitled to an equal amount. Instead, they were part of his employee compensation.

Second, the court held Valerie was not entitled to a share of Val-Chris's profits earned after the valuation date, but before Christopher actually purchased her interest.

Third, the court held that when Val-Chris provided the funds to purchase Valerie's interest on Christopher's behalf, that also did not amount to a disbursement.

Fourth, the court held Valerie was not entitled to profits from, or a buyout of her interest in, a subsidiary of Val-Chris called Worldwide Lenders, Inc. The court held that Worldwide Lenders, Inc., was included in the valuation of Val-Chris and thus Valerie already received any payout due to her on that front. The court also held that any claim that Valerie was not given matching disbursements that Christopher received should have been raised in the valuation proceeding.

Fifth, the court held Christopher was not liable to Valerie for profits from a corporate entity that he did not disclose to her at the time of the family law judgment called Full House TD's, LLC. Although the court found Christopher should have disclosed the existence of Full House TD's, LLC, the court found no damages because all of its assets had been transferred back to Val-Chris prior to the valuation date. The court also found Valerie's claim was barred by res judicata because this was an issue that could have been litigated in the valuation proceeding.

Finally, the court held Valerie was not entitled to attorney fees pursuant to section 10 of the marital dissolution judgment, which provides for a recovery of fees incurred in obtaining "willfully concealed . . . after-discovered property." Valerie appealed from the judgment.

DISCUSSION

On appeal, Valerie contests each of the five holdings listed above. The first three issues generally concern whether Valerie was entitled to a reciprocal disbursement from Val-Chris for various monies Christopher received. The relevant provision of the marital dissolution judgment provides, "Any time that [Christopher] receives payment of any dividend, profit, or any other disbursement from the Company (other than reasonable reimbursement of expenses related to the Company, [Christopher's] compensation or [Christopher's] bonus), [Valerie] shall receive a payment equal to any such disbursement that is paid to [Christopher] by the Company." We interpret the stipulated judgment de novo. (*Fox v. Fox* (1954) 42 Cal.2d 49, 52.) However, we review the court's factual findings for substantial evidence.

Pension Contributions

Valerie contends she should receive a payment equal to the contributions that Val-Chris made to Christopher's pension from the time of the marital dissolution judgment onward, which amount to \$472,700. In resolving the issue of pension contributions, the court found that Val-Chris's contributions to Christopher's pension plan did not amount to a dividend, profit, or other disbursement, but instead were "benefits paid pursuant to his compensation." As a factual matter, the court found "that the Pension was in effect for almost two decades prior to separation. During marriage, [Valerie] was aware of the contributions and that [Christopher] took a lower salary in return for these pension contributions."

In arguing the court erred, Valerie essentially relies on a single piece of evidence: Val-Chris's 2009 tax return lists "Pensions, profit sharing, etc., plans" as a separate category from "Compensation of Officers" and "Employee benefit programs." According to Valerie's brief, this information comes from exhibit 1 of the trial in the family law division. However, neither party transmitted the exhibits to us, nor were any exhibits included in the clerk's transcript, and thus we have no record to assist in the analysis of Valerie's claim.

Assuming, however, that Valerie's brief accurately summarized the tax return, we would, nonetheless, conclude there was no error. Valerie has not cited any legal authority for the proposition that the characterization of an expense on a tax return is determinative of its legal characterization. Instead, we look to the marital dissolution judgment, which defines Christopher's "Compensation" as including "salary, compensation, and benefits" paid to Christopher by Val-Chris. A pension contribution is commonly understood to be a benefit incident to an employee's compensation. (*See Cal Fire Local 2881 v. California Public Employees' Retirement System* (2019) 6 Cal.5th 965, 983 ["A public employee's pension constitutes an element of compensation"]; *Kern v. City of Long Beach* (1947) 29 Cal.2d 848, 853 ["a pension right is 'an integral

portion of contemplated compensation””].) The factual findings of the court support that characterization here, as Christopher had been receiving pension contributions for 20 years prior to separation, and he took a lower salary as a result. Valerie does not challenge those factual findings on appeal. Accordingly, there was no error in deeming pension contributions to be part of Christopher’s compensation. And since it was part of his compensation, Valerie was not entitled to a reciprocal disbursement under the marital dissolution judgment.

Val-Chris Disbursements During the Buy-out Period

Next, Valerie contends she is entitled reciprocal payments on two forms of disbursements during the buy-out period (i.e., the period from the valuation date until Christopher actually acquired her interest, which lasted from approximately February 2013 until July 2014).

First, Valerie contends she is entitled to one half of all of the profits Val-Chris earned during that period. Importantly, none of the profits she is claiming in this argument were actually disbursed to Christopher. So far as we can tell from the record, they stayed in the company. We see nothing in the marital dissolution judgment that would compel Christopher to disburse all of the company’s profits as dividends.

Second, when Christopher bought Valerie’s interest in Val-Chris, the funds actually came from Val-Chris. Valerie contends this was a “disbursement” under the marital dissolution judgment, and thus she was entitled to a reciprocal payout. It takes little effort to see the absurdity in this position. If Valerie were correct, she would end up with the entire value of the company—one half from the payout equal to half the value of the company, and the other half from the reciprocal payment. Valerie does not address this problem in her brief.

More fundamentally, Valerie’s arguments are flawed because they are based on an assumption that she was still entitled to disbursements after the valuation

date. That assumption fails for the simple reason that if she were to receive disbursements after the valuation date, she would effectively be receiving *double*. Here is why: the value of Val-Chris was calculated using the capitalization of earnings method in which future profits are given a present value and incorporated into the present value of the company. (*GTE Sprint Communications Corp. v. County of Alameda* (1994) 26 Cal.App.4th 992, 996 [“The [capitalized earnings ability] approach estimates the future income stream a prospective purchaser could expect to receive from the enterprise and then discounts that amount to a present value by use of a capitalization rate”].) In other words, future profits—i.e., profits after the valuation date—were already built into the payout Valerie received. Hence, if she were to receive an actual disbursement post-valuation date, that disbursement would be accounted for twice.³

Valerie’s basic response to all of this is that the judgment does not prohibit her from receiving post-valuation date disbursements. But just as we avoid absurd results in interpreting a contract (*County of Humboldt v. McKee* (2008) 165 Cal.App.4th 1476, 1498), we interpret a judgment to avoid absurd results too (*Colvig v. RKO General, Inc.* (1965) 232 Cal.App.2d 56, 65 [“The interpretation of a judgment, insofar as its meaning is concerned, is governed by the same rules which apply in ascertaining the

³ We hasten to recognize that, until Christopher actually bought Valerie’s shares, she maintained her position as a 50 percent shareholder with all the rights that status confers, and she maintained her right to reciprocal disbursements under the marital-dissolution judgment. (See *Abrams v. Abrams-Rubaloff & Associates, Inc.* (1980) 114 Cal.App.3d 240, 250 [“the pendency of the appraisal did not in any way alter [the shareholder’s] rights as a shareholder. Until [the other shareholder] or the corporation actually purchased [the] stock, [the shareholder] would continue to enjoy any benefits accruing to him as a 50 percent shareholder, including the receipt of any dividends”].) However, any post-valuation date disbursements should have been credited to Christopher against the purchase price so as to avoid a double disbursement for Valerie. In fact, Valerie received two post-valuation date disbursements: one for \$40,000, and another for \$80,000. The parties stipulated that Christopher would get a credit as to the \$40,000. There was no such stipulation as to the \$80,000, and the court did not grant Christopher a credit. Christopher did not cross-appeal from that ruling.

meaning of any other writing. [Citations.] It is the general rule that the language of a writing governs its interpretation, if the language is clear and explicit, and does not involve an absurdity”]). Here, while the judgment does not prohibit Valerie from receiving post-valuation-date disbursements, neither does it compel that result. The judgment simply did not contemplate the mechanics of an election to dissolve the company and a subsequent election to buyout Valerie’s share. Granting her an effective double disbursement is an absurd result that we avoid by interpreting the judgment to cease requiring disbursements once an election had been made to purchase Valerie’s share and a valuation date had been set.⁴

After-discovered Property

The final three issues all concern whether Valerie was entitled to additional money and attorney fees for property discovered after the marital dissolution judgment, which should have been included in the judgment (or at least disclosed prior to the judgment). Section 10 of the marital dissolution judgment, entitled “After Discovered Property,” provides, “All property or property interests discovered after the effective date of this Judgment which would have been community property as of the effective date of this Judgment shall be divided equally between the parties. In the event that either party has *willfully concealed* any such after discovered property, that party shall be obligated to pay to the other party one-half of the value of the property on the effective date of this Judgment, plus interest thereon at the rate of ten percent (10%) per annum until paid, or one-half of the value of the property on the date of its discovery or actual division, whichever is greater, together with any damages including but not limited to costs of

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Most of Valerie’s argument on appeal is directed to the court’s conclusion that res judicata barred her claim for profits and disbursements during the buy-out period. The court was persuaded that Valerie could have raised these issues in the valuation proceeding. Because we conclude Valerie is not entitled to disbursements during the buy-out period, we need not address the res judicata issue.

enforcement and attorney fees incurred in obtaining its recovery. The court shall retain jurisdiction over all after discovered property.” (Italics added.) Valerie contends there are two properties that should have been awarded to her under this section.

The first property is an interest in an entity called Worldwide Lenders, Inc. (Worldwide). Worldwide was formed in the 1990s with Christopher as its sole shareholder. The purpose of forming Worldwide was to hold certain assets in order to reduce potential liability of either Christopher and Valerie personally, or Val-Chris. Worldwide had no operations of its own other than to hold assets. Worldwide was disclosed prior to the marital dissolution judgment and was identified as holding three properties at the time, all of which were divided in the judgment.

On appeal, Valerie contends the court erred in refusing to award to her half of Worldwide’s income, half of Worldwide’s value, and disbursements equal to those received by Christopher. The court concluded that all of Worldwide’s assets were accounted for in the valuation of Val-Chris, and that she was barred from seeking disbursements under res judicata principles because she failed to request them in the valuation proceeding.

Much of Valerie’s argument is hamstrung by the fact that she relies extensively on trial exhibits that are not in our record. Our starting point is the “three fundamental principles of appellate review: (1) a judgment is presumed correct; (2) all intendments and presumptions are indulged in favor of correctness; and (3) the appellant bears the burden of providing an adequate record affirmatively proving error.” (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58.)

Thus, for example, she cites the fact that in 2010, Worldwide held over \$1,000,000 in trust deeds. But she cites an exhibit for that proposition, which we do not have. And even if the exhibit says exactly what Valerie claims, the mere fact that Worldwide held assets valuing \$1,000,000 at *some* point in 2010, tells us nothing of substance. We do not know the value of the assets that were actually disclosed in the

marital judgment for purposes of comparison, nor do we know *when* in 2010 Worldwide acquired those assets (the marital dissolution judgment was entered May 11, 2010). And in any event, Valerie does not challenge the court's finding that all of Worldwide's assets were accounted for in the valuation of Val-Chris.

Valerie also cites an exhibit for the proposition that Worldwide earned \$223,153 in profits over an undefined period of time. But again, we do not have that evidence, and even if we did, Valerie does not explain why those profits would not be accounted for in the appraisal of Val-Chris. She does not claim that Christopher took them as a disbursement, so presumably they could be traced forward to the valuation.

Finally, Valerie cites an exhibit for the proposition that Christopher took \$29,457 in disbursements from Worldwide. The only testimony we have on that front, however, is Christopher's testimony that various checks were written to him as reimbursements for various expenses he personally incurred, including tax liabilities. Valerie does not claim she incurred a comparable liability and makes no effort to explain why this was anything other than reimbursement for expenses for which she is not entitled to a like-kind disbursement under the marital dissolution judgment. There was no error.

The second property is a subsidiary of Worldwide called Full House TD's, LLC (Full House). Like Worldwide, Full House had no business operations other than to hold assets transferred to it by Val-Chris. Full House was formed in February of 2010 (post-separation) and ceased all operations as of sometime in 2011, at which point all of its assets were transferred back to Val-Chris. Full House was not disclosed prior to the marital dissolution judgment. However, all of Full House's assets were included in the valuation of Val-Chris.

Our analysis of Full House essentially mirrors our analysis of Worldwide. Valerie cites an exhibit, which we do not have, for the proposition that Full House had income of \$64,357 (over some undefined period of time). But Valerie does not explain

where that income went or why she should have been awarded half of it. She does not claim all of it was disbursed to Christopher, and she acknowledges that all of Full House's assets were included in the valuation of Val-Chris. She does claim Christopher received \$26,295 in disbursements, but once again our only evidence of that is testimony from Christopher that this was simply reimbursements for expenses or tax liabilities he personally incurred through his involvement with Full House. This evidence did not compel the court to award Valerie a like-kind distribution.

Finally, Valerie contends the court erred by refusing to award her attorney fees for after-discovered property pursuant to section 10 of the marital dissolution judgment, which we quoted above. The court denied Valerie's request, finding she failed to identify "any omitted assets, existing at the time of the Judgment. [Valerie] makes claims of undisclosed assets, but affixes no specific assets to that claim and no specific damages to those claims." Likewise on appeal, Valerie refers generically to her arguments about Worldwide and Full House as after-discovered property, but she does not identify any specific assets that existed *at the time of the judgment* but were concealed. True, Christopher did not disclose the existence of the entity Full House. But Valerie did not present any evidence that Full House had any undisclosed assets at the time of the judgment. This was not for lack of trying. The court described Valerie's extensive discovery efforts as follows: "[Valerie] spent significant time and effort in extensive discovery and forensic imaging of all VCI computers and [Christopher's] personal computers. [Valerie] spent time with the appraisers explaining her concerns. [One of the appraisers] testified [Valerie] brought boxes of documents to his office which he reviewed as part of his valuation. [Valerie's attorney] vigorously cross-examined the experts regarding missing assets and [Valerie's] other issues." Notwithstanding that exhaustive discovery, Valerie has not identified a single discrete asset existing at the time of the judgment that was concealed. Accordingly, Valerie has not shown the court erred by denying her attorney fees under section 10 of the marital dissolution judgment.

DISPOSITION

The judgment is affirmed. Christopher shall recover his costs incurred on appeal.

IKOLA, J.

WE CONCUR:

FYBEL, ACTING P. J.

THOMPSON, J.